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SUBJECT: UKRAINE'S IPR AGENCY FACES EXISTENTIAL CHALLENGES

¶1. (U) Summary. Upon receiving information that Ukraine's State Department of Intellectual Property (SDIP) was facing the possibility of elimination, Emboffs met with its chairman, Mykola Paladiy, to discuss the situation. The SDIP also briefed Emboffs on the status of new copyright legislation in the parliament, which is expected to be voted on after the January 2010 presidential elections. Chairman Paladiy also updated Emboffs on successful initiatives to train judges in IPR law and enhance interagency cooperation on IPR within the GOU. Emboffs also raised the issue of GOU use of unlicensed software, which Paladiy says is a 'stuck' issue with rights holders. End Summary.

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Potential Elimination of SDIP  
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¶2. (SBU) Chairman Polokhalo of the Parliamentary Committee on Science and Education has submitted to the Cabinet of Ministers a proposal to eliminate the SDIP, and replace it with a new State Committee of Intellectual Property, which would report directly to the Cabinet of Ministers. SDIP currently falls under the jurisdiction of the Ministry of Education and Science. Mykola Paladiy, SDIP's Chairman told EconOffs on November 6 that this is Polokhalo's third attempt to eliminate the SDIP. This attempt is more threatening, however, because Polokhalo has the support of Minister of Education and Science Vakarchuk. First Deputy Prime Minister Turchinov has ordered a ministerial level review of the proposal, with the final reports to be submitted to the Ministry of Education and Science, according to Paladiy. The proposed change could be approved and implemented by a Decree of the Cabinet of Ministers and would not require an act of parliament.

¶3. (SBU) Chairman Paladiy believes that Polokhalo wants to create a new organization so that he could fill its leadership with his associates. Paladiy expressed hope that the attempt would fail, and mentioned that the Deputy Minister of Education and Science, Pavlo Poliansky, opposes the elimination of SDIP as 'unnecessary'. However, as Deputy Minister, Poliansky has no authority to block the decision of the Minister, so Paladiy's confidence in SDIP's continued existence may be unfounded.

¶4. (SBU) Prior to the meeting with SDIP, a representative of the Ukrainian Music Alliance (UMA), a collective society that has developed positive working relationships with SDIP, expressed concern that the creation of a new State Committee of Intellectual Property would be a severe setback for IPR enforcement in Ukraine. The representative noted that Committee Chairman Polokhalo has connections to organizations which have profited in the past from exploitation of loopholes in IPR laws and weak enforcement. UMA would not

only need to establish new relationships with any new body but was concerned that the new organization would not actively protect their interests.

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IPR Legislation -- Likely Not This Year  
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15. (U) Paladiy stated that Ukrainian IPR laws were now generally harmonized with international standards. In addition, SDIP is presently following the course of two related laws through parliament - a new draft law on industrial property rights and a new draft copyright law.

16. (U) The Draft Law on Industrial Property Rights amends the Civil Code of Ukraine, the Civil Procedural Code of Ukraine, and the following laws: "On Protection of Inventions and Utility Models," "On The Protection of Industrial Designs," "On The Protection of Marks for Goods and Services," "On the Protection of Topographies of Integrated Circuits," and "On the Protection of Appellations of Origin." This legislation would bring the laws into compliance with European Union directives and international agreements to which Ukraine is a signatory. This legislation was introduced on July 23 as Draft Law 5015, but remains in Committee and has not been submitted to the full Rada for a first reading.

17. (SBU) Five versions of the Draft Copyright Law are currently circulating in the Ukrainian parliament. According to Paladiy, SDIP and the majority of copyright holders and collective rights management societies support the version authored by former Deputy Prime Minister Tabachnik. The goal of the new legislation is to legally define the role of collective rights management societies in Ukraine - determining how such societies are formed and recognized, how they operate, and how their authority can be terminated by the rights holder. SDIP prefers this version because, in Paladiy's view, the other four reflect the interests of special interest groups that have profited from loopholes in the current laws. Due to the contentious atmosphere in parliament, Paladiy does not expect progress on the Copyright Law this year.

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Enforcement  
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18. (U) SDIP has found enforcement to be the most difficult part of its responsibilities. Paladiy reported that a shift in priorities away from IPR at local levels has reduced the level of monitoring performed by police, allowing pirate retail outlets, such as Kyiv's infamous Petrivka Market, to flourish. SDIP also reports difficulty in enforcing IPR laws against criminals using the Internet as a distribution channel.

19. (U) SDIP has signed an agreement with the judiciary to establish a dedicated Patent Court, Paladiy reported. Those parts of the judiciary that already deal with patent law will be separated out and organized into the new body, though given the political considerations involved, SDIP was unable to estimate a timeline for the completion of this process. SDIP also plans to continue to organize training seminars on IPR issues for judges, and requested support from the USG in this effort.

110. (U) In the area of anti-piracy, SDIP has signed an inter-ministerial agreement with the State Security Service, Customs Service, Ministry of the Interior, and Ministry of Culture to facilitate interagency cooperation. A joint working group will be formed after the January 2010 presidential elections, and SDIP hopes that the working group will result in an intensification of local law-enforcement efforts.

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Education  
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¶11. (U) SDIP recognizes the ongoing need to train Ukrainian officials in IPR law. Towards that end, it has launched a series of IPR seminars for members of the Executive Branch, and plans to continue the program in 2010. It also plans to hold four quarterly IPR conferences in 2010, the first to be held in February. Also, starting in 2010, SDIP will begin issuing diplomas in IPR studies to Ukrainian students as part of a joint program with the University of Naples.

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International Integration  
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¶12. (U) SDIP has been working to further integrate Ukraine's IPR enforcement activities with the international community. To this end, it is pursuing membership in the European Patent Office (EPO). The EPO accepts applications for patents and then coordinates with member-state patent authorities to issue a bundle of national patents from member countries. Membership would allow Ukraine to add its national patents to the EPO bundle.

¶13. (U) There are ongoing disputes between rival Ukrainian collective societies (organizations responsible for collecting royalties from commercial music users such as nightclubs, radio stations and restaurants). Some societies have a track record of collecting royalty payments and then keeping the money, or demanding payments from users that had already made payments to another society. The SDIP has invited a professional Swiss collective management society to operate in Ukraine as a means of stabilizing the situation in the music royalty collection business.

¶14. (U) Paladiy stated he wanted SDIP to become a World Intellectual Property Organization (WIPO)-recognized patent search and examination body. To accomplish this, the SDIP would need to create and maintain a database of registered patents and conduct searches for clients to ensure that pending patent applications did not encroach on existing patents. Moscow, having inherited the bulk of the Soviet Union's Patent Office and related infrastructure, currently is the sole internationally-recognized patent search and examination body in the CIS region. Paladiy recognized that creating a competing service center would be a long and difficult undertaking.

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Counterfeiting  
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¶15. (U) SDIP reports that pirate audio/video media (DVDs and CDs) as a percentage of all sales is increasing in Ukraine simply as a result of the 40% decline in the global AV market since the beginning of the financial crisis. Technological changes in the black market trade in AV media have also made enforcement more difficult for SDIP. First, many pirate retailers have switched their stock to Flash memory cards, which are physically smaller than optical media, yet have greater storage capacity. Second, a large number of pirate media distributors are now using the Internet for distribution, bypassing physical retail outlets like Kyiv's Petrivka Market. Paladiy stated that Internet piracy is on the rise and a large portion of the market.

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Patent Protection  
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¶16. (U) Emboffs raised concerns from the American agrochemical industry that their patents are being violated by small Ukrainian firms who use insider connections to receive Ministry of Ecology approval in months, rather than the years it takes American firms. SDIP officials responded that the timeframe for approval in Ukraine is similar to that in Europe, and welcomed submissions of patent violation claims, along with supporting evidence, for consideration.

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## Unlicensed Software

¶17. (U) According to expert estimates, 60-70% of the software used in government offices in Ukraine is unlicensed, a fact repeatedly noted in the annual USTR Special 301 Report on IPR enforcement. SDIP reports that there has been no progress in reducing this level of pirate software usage in the past year. Although SDIP had proposed the inclusion of a line-item in the 2009 budget for acquiring software licenses, the final budget did not include money for this item. Paladiy told Embosffs that the issue is more political than technical, as parliamentary deputies generally consider Microsoft and other rights holders to be enemies.

¶18. (U) Paladiy feels that the rights holders need to be more aggressive in working with parliament and pressuring the GOU to respect intellectual property rights. SDIP has suggested joint action plans to tackle the issue of unlicensed government software with Microsoft and SoftProm (a software firm that represents themselves and seven other smaller suppliers), but say that the rights holders have not followed up with SDIP for seven months. Paladiy considers the issue to be "stuck".

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Comment  
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¶19. (SBU) Although SDIP continues to work diligently to improve its capacity and the environment for IPR protection in Ukraine, the past year has been short on major successes for IPR enforcement in Ukraine. This can be attributed to the fact that the GOU has already made significant progress over the past eight years in the area of IPR protection, and is now left with the harder tasks. Foreign rights holders and the USG have built up a strong working relationship with the SDIP, and SDIP replacement with a new Cabinet of Ministers Committee would likely be a setback, not only for our cooperation but also for the overall IPR regime in Ukraine. End Comment.  
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